

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal No. 2005-75
)	
CLARENCE HENRY and GLEN SMITH,)	
)	
Defendants.)	
_____)	

Attorneys:

Linwood Wright, AUSA
For the plaintiff,

Thurston McKelvin, FPD
For defendant Clarence Henry,

Stephen Brusch, Esq.
For defendant Glen Smith.

Memorandum Opinion

Before the Court is defendant Glen Smith's ("Smith") motion to suppress. Defendant Clarence Henry ("Henry") joined in the motion. The defendants seek suppression of all statements made by them while in custody. They also seek suppression of all physical evidence seized during a search of Smith's car.

I. Facts

A hearing on the suppression motion was held Friday, October 20, 2006. Officer Angel Diaz testified to the facts that follow. In late 2000 or early 2001, a confidential source told United

States Drug Enforcement Task Force ("Task Force") members that Henry was distributing illegal drugs from his apartment on St. Croix. Task Force officers installed a pole camera across from Henry's apartment in April 2001. Task Force officers monitored traffic in and out of Henry's apartment through May 2001, noting it was consistently heavy during the evening and very early morning hours. The officers obtained a search warrant of Henry's apartment.

On June 12, 2001, before executing the search warrant, Task Force officers surveilled Henry's apartment. They observed Smith arrive at Henry's apartment in an automobile. In the apartment's parking lot, Smith spoke with an unidentified female. He then went into Henry's apartment. Next, the female went into Henry's apartment and left shortly thereafter while rolling and smoking what appeared to be a marijuana cigarette. Smith left Henry's apartment, reached into his vehicle's backseat, and appeared to place an item into a black stocking. Smith carried the stocking back into Henry's apartment. Then Smith and Henry left the apartment together. Smith appeared to be smoking a marijuana cigarette. Smith and Henry both entered Smith's vehicle, without the black stocking. They then drove away, with Smith operating the vehicle.

The surveilling Task Force officers requested other Task Force officers and a Virgin Islands Police Department officer to stop Smith's vehicle. They did so shortly after Smith and Henry left Henry's apartment. While approaching the vehicle, the law enforcement officers detected the strong scent of marijuana. The officers then searched Smith's vehicle and recovered a brown paper bag with approximately 385.2 grams of marijuana, packaged among four separate ziplock bags. On January 12, 2006, the grand jury charged Smith and Henry with multiple counts of possessing and distributing drugs.

The defendants argue the agents violated their Fourth Amendment rights by conducting a warrantless search of Smith's car. Thus Smith and Henry seek suppression of all evidence seized by the agents from the car.¹

II. Discussion

The Fourth Amendment protects citizens "against unreasonable searches and seizures." U.S. Const., amend. IV.² "What is

¹ Additionally, Smith and Henry seek suppression of any statements made to the agents arguing that the Court must suppress any involuntary confessions. However, it appears there are no statements to suppress.

² The Fourth Amendment has been extended to the United States Virgin Islands by section 3 of the Revised Organic Act of 1954, 48 U.S.C. § 1561, entitled "Bill of Rights."

reasonable depends upon all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself." *United States v. Montoya de Hernandez*, 473 U.S. 531, 537 (1985). "The 'general rule' is that 'warrantless searches are presumptively unreasonable" *United States v. Ubiles*, 224 F.3d 213, 216-217 (3d Cir. 2000) (quoting *Horton v. California*, 496 U.S. 128, 133 (1990)). An exception applies for searches of automobiles.

"An investigatory stop is permissible under the Fourth Amendment if supported by reasonable suspicion, and a warrantless search of a car is valid if based on probable cause." *Ornelas v. United States*, 517 U.S. 690, 693 (1996) (internal citations omitted); see also *United States v. Burton*, 288 F.3d 91, 100-101 (3d Cir. 2002) ("The automobile exception to the warrant requirement permits law enforcement to seize and search an automobile without a warrant if probable cause exists to believe it contains contraband. While a seizure or search of property without a warrant ordinarily requires a showing of both probable cause and exigent circumstances, the 'ready mobility' of automobiles permits their search based only on probable cause." (internal quotations omitted)).

Whether probable cause exists is an objective inquiry. See *Whren v. United States*, 517 U.S. 806, 813 (1996) ("Subjective

intentions play no role in ordinary, probable-cause Fourth Amendment analysis."). Probable cause is determined by viewing the totality of the circumstances to see whether, at the moment of the search, "the facts and circumstances within [the police officers'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense." *Beck v. Ohio*, 379 U.S. 89, 91 (1964); see also *Brinegar v. United States*, 338 U.S. 160, 175-76 (1949) (holding that probable cause exists where the facts and circumstances as they exist at the time of arrest support a finding that a crime has been or is being committed).

It is important to note that police officers may rely on another officer's reasonable suspicion to execute an investigatory stop. See *United States v. Hensley*, 469 U.S. 221, 232 (1985) (holding that "police officers may stop and briefly detain a person who is the subject of a 'wanted flyer'" issued from another police department). Under such circumstances, the Court's inquiry is whether the officers requesting assistance had a reasonable articulable suspicion upon which to base a stop. Cf. *United States v. Coward*, 296 F.3d 176, 179 (3d Cir. 2002) ("In *Whiteley v. Warden* . . . the Supreme Court held that although a police officer may rely on the representations of other officers

when making an arrest, the officers requesting assistance must have sufficient information to show probable cause.").

"It is well settled that the smell of marijuana alone, if articulable and particularized, may establish not merely reasonable suspicion, but probable cause." *United States v. Ramos*, 443 F.3d 304, 308 (3d Cir. 2006). In *Ramos*, police officers drove between two vehicles and smelled the odor of marijuana. *Id.* at 306. The officers stopped one of the vehicles based on the odor. *Id.* The defendants moved to suppress items subsequently found in the vehicle. *Id.* The district court granted the defendant's motion to suppress finding the officers lacked probable cause to stop the vehicle. *Id.* at 307, n.2. On appeal, the government argued it had reasonable suspicion to justify the stop. *Id.* at 307. The Third Circuit reversed the district court holding that the odor of marijuana was sufficiently particularized to the car to justify the *Terry* stop of the car. *Id.* at 309.

III. Analysis

Here, the arresting officers stopped the car based on the surveilling officers' observation of Smith smoking what appeared to be a marijuana cigarette. That observation gave rise to a particularized and objective basis for suspecting criminal

wrongdoings. Accordingly, the surveilling officers' reasonable suspicion was sufficient to stop the vehicle.

Upon approaching the stopped vehicle, the officers smelled the odor of marijuana. This scent gave rise to probable cause for the officers to search the vehicle. *Ramos*, 443 F.3d at 308.

III. CONCLUSION

The physical evidence seized from Smith's car will not be suppressed because the officers had reasonable suspicion to stop the vehicle and had probable cause to search the vehicle. Accordingly, the motion to suppress will be denied. An appropriate order follows.

DATED: November 30, 2006

FOR THE COURT:

_____/s/
Curtis V. Gómez
Chief Judge

ATTEST:

WILFREDO MORALES
Clerk of the Court

By:_____/s/
Deputy Clerk

USA v. Henry and Smith
Criminal No. 2005-75
Memorandum Opinion
Page 8

Copies to:

Hon. Geoffrey W. Barnard
Linwood Wright, AUSA
Thurston McKelvin, FPD
Stephen Bruschi, Esq.
Carol C. Jackson
Olga Schneider
Lydia Trotman
Kendra Nielsam

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

)	
)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Criminal No. 2005-75
)	
v.)	
)	
CLARENCE HENRY and GLEN SMITH,)	
)	
Defendants.)	
_____)	

Attorneys:

Linwood Wright, AUSA
For the plaintiff,

Thurston McKelvin, FPD
For defendant Clarence Henry,

Stephen Brusch, Esq.
For defendant Glen Smith.

ORDER

Before the Court is the defendants' motion to suppress. For the reasons given in the accompanying memorandum, it is hereby

ORDERED that the motion to suppress is **DENIED**.

DATED: November 30, 2006

FOR THE COURT:

_____/s/
Curtis V. Gómez
Chief Judge

USA v. Henry and Smith
Criminal No. 2005-75
Order
Page 2

ATTEST:

WILFREDO MORALES
Clerk of the Court

By: /s/
Deputy Clerk

Copies to:

Hon. Geoffrey W. Barnard
Linwood Wright, AUSA
Thurston McKelvin, FPD
Stephen Bruschi, Esq.
Carol C. Jackson
Olga Schneider
Lydia Trotman
Kendra Nielsam